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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

SAMUEL C. MC MORRIS,

Petitioner

-vs-

THE STATE BAR OF CALIFORNIA,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

SAMUEL C. MC MORRIS
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Petitioner in Propria Persona

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TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES AND TO THE ASSOCIATE JUSTICES THEREOF:

Your petitioner respectfully shows:

A. QUESTIONS PRESENTED FOR REVIEW

I. Is the language of the Business and Professions Code here involved unconstitutionally vague, indefinite, and uncertain?

II. Have the proceedings and judgment

against petitioner denied petitioner due process and equal protection of the law?

III. Has petitioner been unconstitutionally discriminated against because of his race?

B. TOPICAL INDEX

C. TABLE OF CASES

D. REFERENCE TO OFFICIAL REPORTS

Petition is hereby made for a writ of certiorari to the Supreme Court of the State of California in Case No. S.F. 24545 therein, the opinion wherein was filed on the 5th day of December, 1983, ordering disbarment of your petitioner on the 4th day of January, 1984. The said opinion is reported as McMorris v State Bar 35 C3d 77, 196 CR 841, and will be set forth in full in the Appendix hereto.

E. JURISDICTIONAL GROUNDS

Upon the filing of the opinion of the California Supreme Court, petitioner filed timely Petition for Rehearing on December 20, 1983, and the same was denied on January 25, 1984. The statutory provision believed to sustain the jurisdiction of this Court is Section 1257(3) of Title 28 of the United States Code.

F. CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Consti-

tution of the United States provides: "Nor shall any state deprive any person of life, liberty, or property, without due process of law." By virtue of a further clause in the said Amendment, a state may not deny to any person within its jurisdiction the equal protection of the law.

G. STATEMENT OF THE CASE

In or about August, 1975, after petitioner had practiced law for a total of nearly twenty-three years (one in Ohio, twenty-two in California), during which he had appeared three times before the United States Supreme Court, a first complaint was filed against petitioner by one Santiago Tanguma. Mr. Tanguma had been well satisfied with petitioner's settlement, for $25,000.00, of a vehicle-collision case with the other driver's insurance company, but wanted the Bar to pressure petitioner into filing an action against the uninsured motorist himself. The Bar attorneys did not press the actual com-

plaint of Mr. Tanguma, but used it as a basis or pretext for investigating petitioner's law practice in general; and after a year, filed an order to show cause primarily on the fact that petitioner had paid the multiple medical claims of Mr. Tanguma through petitioner's personal account rather than a client's truse account although petitioner explained that the nature of his practice had not required a client's account and that it was only this one instance in which petitioner's personal account was so used. In a second complaint, although believing he had earned the small advance retainer of $200.00, petitioner nevertheless refunded it months before the order of the California Supreme Court, filed December 8, 1977, effective January 9, 1978, placing petitioner on one year's probation (See decision of the disciplinary board, State Bar of California, filed 6-17-77 in Case No. Alameda 728; and the order of the California Supreme Court, in Bar Misc. No.

4028, filed December 8, 1977).

Upon a subsequent complaint that petitioner had filed, but let lapse, a slip-and-fall case, petitioner's first actual suspension was ordered by the California Supreme Court, in Bar Misc. 4077, on 9-20-78, effective 30 days later, for a period of 90 days, which was extended for an additional four months, until petitioner took and passed the Professional Responsibility Test.

The second suspension was imposed by order of the state Supreme Court dated February 26, 1981, modified March 26, 1981, and was based upon three complaints: Each of the complainants admitted that petitioner had taken action upon contingent fee cases but had not fully performed the agreement between attorney and client. In the one case in which an advance ($100.00) had been paid, it had been repaid before hearing of the complaint. (See decision in Alameda 750 and 755, filed August 31, 1979; and the published

opinion of the state Supreme Court, in Case No. 31324, published as McMorris v State Bar 29 C3d 96.

The third and final set of complaints, upon which petitioner's disbarment is based, presents constitutional problems: First, all of the four alleged acts of negligence or breach of contract occurred before the first period of suspension. Secondly, as to three of the complaints, the contracted legal services were prevented by the fact of suspension. As to the fourth complaint, it is clear that, after seeking civil relief against petitioner, the client brought an action before the Bar for the purpose of attempting collection:

Mr. D. had an action for wrongful death of his son against an uninsured, poverty-stricken defendant. Mr. D. was willing to settle the matter for $5,000.00, but did not object when petitioner, instead, proceeded to have the matter set for trial. In the

interim, petitioner became the victim of personal and professional problems which will be outlined below; and the case was dismissed for not having been brought to trial within the five-year California limit. It was so dismissed on 1-21-75. Mr. D. did not file his complaint with the Bar until over five years later. In the meantime, he won a default judgment against petitioner for $75,000.00; and when this was not paid, Mr. D. filed a lien against petitioner's property and, in addition, filed a complaint with the Bar. At the hearing before the Bar committee, Mr. D. had to grudgingly admit that petitioner had satisfactorily handled two other matters for him, one before and one after the retainer in the wrongful-death case.

Similarly, in the F. matter discussed in the disbarment opinion, Mr. F. stated that he had been represented satisfactorily by petitioner in the past. In the matter of which he complained, it had come on for trial days

after the beginning of petitioner's suspension; Mr. F. was notified thereof, and hired other counsel, who had the default set aside.

The final matter discussed by the Court involves a Mr. T., who, in referring to prior service by petitioner, stated that petitioner had the reputation of being able to handle just about any kind of legal problem. However, it clearly appears that, with respect of the three matters of which he complained to the Bar, petitioner's suspension would have prevented action by petitioner; and the complainant does not present evidence of anything more than discussion of his problems, without retainer, just before the said period of suspension, which the complainant did not deny knowledge of.

Petitioner did not appear at the hearing to contest the alleged breaches, but, in a Petition for Review of the Bar's recommendation of disbarment, in Case No. S.F. 24545, addressed the following argument re disposi-

tion and reasonable discipline:

I

Petitioner did not respond by pleadings or appearance at the hearings of the referenced matters for the following reasons:

(a) Petitioner did not challenge, in most instances, the claims of complainant clients, but expected the finding to be breach of contract or negligence, not intentional tort; and petitioner was prepared to attempt to settle any civil wrong caused by the problems for which petitioner did not feel fully responsible, but which certainly were not the fault of the clients.

(b) Because of frustration over the problems over which petitioner did not seem to have control and which led to unintended injury, petitioner had decided to resign from the Bar, and it seemed therefore that petitioner's time could best be spent in handling the rest of his practice, in part to be able to compensate any injured clients. However, in consultation with

several of petitioner's colleagues who were aware of the situation and who had known petitioner since his induction as a member of the Bar, and who urged petitioner not to resign, petitioner reversed his former intention although, as will be explained below, he would prefer to get into some other phase of the profession.

II

Petitioner respectfully hopes that discipline be based (as in the criminal matters so much a part of petitioner's practice) upon the background and character of the accused even more than upon the specific charges before the court or determinative body. For instance, there should be taken into consideration the thousands of cases in which I have rendered highly satisfactory service, sometimes as a matter of charity. I can furnish, as against the charges of the handful of complainants, letters of praise from thousands of other clients. Because I believe that, in

past matters of discipline, the positive aspect of my practice, were not known, considered, or given fair weight, I present below a brief autobiographical review in the interest of justice to this petitioner and, perhaps as well, to the profession itself, to which, as I will point out, I have made major contributions.

III

It must be noted that, in the complaints made against me now or in the past, I have never been accused of dishonesty, crime, or incompetence, although I have handled thousands of cases in the four cities in which I have maintained offices (Columbus, Ohio; Los Angeles, Sacramento, and Oakland, California). The essence of my problem with the Bar has been that it is my nature to take on more than I can handle, to overestimate my capacities, as far as time and energy are concerned, so that there has been an admitted failure to comply with the attorney-

client contract in a very small number of cases.

IV

I was admitted to the practice of law in the State of Ohio on September 6, 1950; to the Bar of California on January 14, 1954; and to the Bar of the United States Supreme Court on October 6, 1956.

V

I have appeared as counsel in over half the counties of this state. I have appeared in federal district courts in San Diego, Los Angeles, Sacramento, Oakland, and San Francisco, and have had no problems with my federal practice. I have appeared in appeals before the Ninth Circuit, and three times before the United States Supreme Court, in landmark cases.

VI

In this day when I read of the need of members of minority groups for special attention and affirmative action to enter the le-

gal profession, it may be of interest that, over a generation ago, when I began my college career, I was at the very top percentile (100) of those entering Ohio State University undergraduate school. On the basis of that score, I was later admitted to Mensa, which requires objective demonstration of being in the top 2% in intelligence, nationally.

VII

Consistently with my admission score, I was admitted to Phi Eta Sigma honorary society, and was near the top of the admittees into law school in 1946. In the top ten-percent at the conclusion of my freshman law year, I was made a member of the staff of the Ohio State Law Journal. In my senior year, I was elected by my fellow staffers the first of my race to serve as associate editor.

VIII

In my trial and appellate work, the impression I have made may be summed up in the language of the United States Court of Appeal,

Ninth Circuit, in Munich v USA 363 F2d 859 (1966): "If one reads the transcript, one finds counsel for defendant was able to make such a searching examination of the expert witnesses, handicapped as they were with 'no corpus' that one's practical appraisal is that the government was at some disadvantage with the jury.....Other points, ably presented, we do not find substantial." (Emphasis added).

IX

I was the first of my race in the Bay Area of California to be certified a specialist in any field by the State Bar Committee on Specialization, my specialty being criminal law. I have, I believe, on the basis of observation, study of the record and consultation with other attorneys, appealed more cases than any other of my race, mostly criminal, but some civil, cases, in the history of this state. I am the only attorney of my race in California history to appear three

times before the United States Supreme Court.

X

As soon as I became a member of the California Bar, I began the legal battles which have been my principal contribution to the profession and the Law: (1) my challenge of general criminal registration and (2) my attack upon the penal treatment of narcotics addiction. In the former, after a five-year effort in state and federal courts, I had been instrumental in the elimination of general criminal registration in this state. In the latter, as sole counsel of record, I presented the arguments which led the United States Supreme Court, in a 6-2 decision, with five written opinions, to strike down the criminalization of the status of narcotics addiction, as the final step in a seven-year effort on my part. (It may be of interest that Warren Christopher, then a member of the largest law firm in Los Angeles, later to become deputy secretary of state, filed a brief

amicus in Lambert v California, the criminal-registration case).

XI

In Lambert v California 355 US 225, 2 LEd2d 228, 78 SCt 240, my arguments led to the establishment of the principle that ignorance of the law can be an excuse (as in failure to register as an ex-convict, not having been informed of the duty to do so). That case was the subject of at least 30 law review articles, and is taught as a part of criminal-constitutional law in every law school.

XII

Continuing in the state courts my fight against the principle of criminal registration, I filed briefs and offered oral argument in the companion cases of Lambert v Municipal Court 53 C2d 690, 3 CR 136, 349 P2d 984 (1960) and Abbott v City of Los Angeles 53 CA2d 674, 3 CR 158, 82 ALR2d 398, jointly argued by me and A.L. Wirin of the American

Civil Liberties Union, Los Angeles. By some sort of judicial legerdemain, the state Supreme Court wrote the principal opinion in Abbott although only in Lambert's briefs and oral argument was the point on which the decision was based made, to wit: that there was conflict between Penal Code Section 290 (sex-offender registration) and the general registration ordinances of the cities and counties, with the result that the state statute pre-empted the field and the local ordinances were stricken. Abbott has been the subject of annotation in 82 ALR2d 398, about a dozen AG opinions, many law review articles, and has been cited in many appellate decisions.

XIII

My most important contribution, of course, was and is in Robinson v California, 370 US 660, 8 LEd2d 758, 83 SCt 1417, the narcotics-addiction, cruel-and-unusual-punishment case, in which I was sole defense

counsel on trial and appeal, and which held that narcotics addiction is sickness, not crime, reviving and modernizing the concept of Cruel and Unusual Punishment. Robinson has since formed the basis of the attack, both state and federal, upon capital punishment, among other applications of the punishment principle. It is, of course, taught as part of college criminal and constitutional law courses. It has been the subject of over fifty law reviews, including one by this petitioner, all over the United States, in Canada, Europe, Africa, and Australia. Robinson forms a major part of the recent Addiction and Criminal Responsibility article, 34 Yale Law Journal 413, which refers as well to another leading case of mine, People v Zapata 220 CA2d 903 (1964); and further refers to my article in 54 ABAJ 1081, "Can We Punish for the Acts of Addiction?"

XIV

The impact and contribution of the res-

urrection of the principle of cruel-and-unusual punishment in Robinson is illustrated in the following cases, which rely in whole or in part on the said case: Brenneman v Madigan 343 FS 128 (1972) (pre-trial detainees); USA ex rel von Wolfersdorf v Johnston (1970) (treatment of criminally insane); Inmates of Boys Training School v Affleck 346 FS 1354 (1972) (juvenile isolation); Wheeler v Glass 473 FS 278 (1973) (institution for mentally retarded); Jackson v Bishop (1968) 404 F2d 571 (use of strap); Nelson v Heyne 355 FS 471 (1972) (corporal punishment of juvenilse, drug use, solitary confinement); Bethea v Crouse 417 F2d 504 (beating by other inmates); Jordan v Fitzharris 257 FS 674 (1966) (prison conditions); Collins v Schoonfield 344 FS 257 (1972) (pre-trial detainee conditions); In re Rodriguez (1975) 14 C3d 639, 122 CR 552, 537 P2d 384 (disproportionate punishment for lewd conduct with children); Peo v Keogh 46 CA3d 919, 120

CR 817 (1975) (four consecutive 14-year terms for forgery); Workman v. Com. (Ky) 429 SW2d 374 (rape: life imprisonment without parole); Peo v Anderson 6 C3d 628, 493 P2d 880 (1972) (death penalty); and Furman v Geergia 408 US 238 (death penalty).

XV

Not resting on my laurels, I have continued my efforts in the constitutional-criminal field: Munich v USA 330 F2d 774, and Munich v USA 337 F2d 356, the former of which established, for the federal courts, the rule that the judge himself (and not counsel) must inform defendant of the consequences of a change of plea to guilty. Newhouse v Misterly 415 F2d 514, is a leading case for the principle that evidence of defendant's refusal to take a test for intoxication may be presented to the jury. Peo v Thompson 144 CA2d 854, 301 P2d 313, my first appeal (1956), defined and limited prosecutions for addiction. Peo v Chaney

63 C2d 767, 48 CR 188, 408 P2d 946, was an early application of the Escobedo-Dorado principle. Peo v Moore 229 CA3d 163, 40 CR 105, overturned a conviction based on the testimony of accomplices alone. Peo v Fierro 236 CA2d 344, 46 CR 132, added to the literature on unlawful search and seizure. Lambert v Mandel's 156 CA2d Supp 855, 319 P2d 469, was my contribution to the Civil Rights field.

XVI

Many cases that I did not "win" established important points of law: Peo v Zapata, supra, has often been cited in law review and decision, among them 48 LEd2d 131, 56 CAL 41, 73 ALR3d 533, 345 F2d 977, 73 CR 1582. In re Patterson, a 4-3 decision after a unanimous opinion in my favor at the Court of Appeal level, has been cited in 50 Mn L 674 and 19 HLJ 78, 535. Peo v Ambrose 135 CA2d 513, 318 P2d 183; Peo v Gardner 177 CA2d 43, 1 CR 830; Peo v Miller 145 CA2d 473, 302 P2d 603; Peo v Jackson 191 CA2d

191 CA2d 297, 12 CR 748, and Peo v Lawton 150 CA2d 431, 309 P2d 862, have been often cited.

XVII

During my law practice, I have had a hobby as essayist, or article writer. I believe I have shown my legal competence by the following major such essays: "Can We Punish for the Acts of Addiction?", 54 American Bar Association Journal, republished in Geneva, Switzerland, in the United Nations Bulletin on Narcotics and printed in five languages. My article "Protecting the Rights of Non-Smokers" was published in Addictions (Canada), republished in Current, Washington, D.C. (January 1977). "What Price Euphoria? The Case Against Marijuana" was published in the Medico-Legal Journal (London), republished in the British Journal of Addiction (London). The Winter, 1965, edition of American Criminal Law Quarterly carried "The Decriminalization of Narcotics Addiction." "Criminal Registra-

tion" appeared in the American Criminal Law Quarterly. "Capital Punishment and International Politics" appeared in the October, 1967, edition of Criminal Law Bulletin. "Narcotics Clinics--An American Viewpoint" was published in the Canadian Criminal Law Quarterly. I have had other articles in the Ohio State Law Journal, Los Angeles Daily Journal and Los Angeles Metropolitan News.

XVIII

I have placed popular-style articles in the following publications: Negro Digest (three articles), Listen (three articles), Life and Health (two articles), Middle East Perspective, Liberator, Soul Illustrated, Bronze America, California Crossroads, African-American, Sacramento Observer, Midwest Quarterly, and Sacramento Outlook (for which I wrote a column for one year).

XIX

My problems in the years during which the complaints arose have been due to con-

ditions beyond my control. Although not fully realized or admitted to myself, the aging process makes me no longer able to "do it all," such as typing an appeal brief all night long to make a deadline. Much of the time involved, I was without secretarial services; and when I was able to find secretaries, they were invariably trainees, whose output was minimal and often unusable, because of inadequate command of English, hence taking more of my time in teaching them than if I had done the work myself. I have practiced law in three California cities, and am in my 30th year of practice; and I had no such problems until moving to the Bay Area in 1971. Although I have always been a sole practitioner (and this may be part of the problem), I have twice employed attorneys just out of law school for periods of one year each, to help me with the work load. Other times, I have been unable to find, or financially unable to employ such help and so tried

to do the work of one and a half to two persons by myself. The net result of all this is that I have attracted more business than I could handle; and a very small number of cases have gone by default, never wilfully. I have never deliberately or with gross negligence damaged the cause of a single client.

XX

Finally, during the years since I moved to Oakland, I have had some health problems: low-back syndrome which strikes once or twice a year; viral infections at least once a year, sometimes twice; and a year's treatment for suspected tuberculosis, in spite of all of which I have gritted my teeth and carried on--never taking more than a few days off, and continue to do so, not really making or accepting even these, or any other, excuses.

XXI

I belong somewhere in the practice of law, on the strength of my abilities, hard

work, and dedication to this profession. I believe that the total picture merits some other disposition than disbarment, or even suspension. However, it may be that I should do something other than engage in general practice, as I have done as sole practitioner for over 29 years. I should like to teach and write for the rest of my life. I have obtained an instructor's certificate in law from the State of California, and I have applied for a position with the Peralta District. I will apply to other districts if nothing is available in my home area. I would thus hope for a suspension, rather than disbarment, as appropriate sanction, if any, so that my membership in the Bar may be intact as I attempt other outlets than the general practice, in which I have had some problems. If I do not get a teaching job, I would consider working for some branch of government, or doing research for a law firm or publisher. I have shown, I think, aptitude

in several areas of this profession (trial, appeal, writing). Freed from the administrative and business aspects of individual practice, I would be able to devote my talents and energy in a more productive manner. I hope that the positive aspects of my history entitle me at least to that much consideration; and I respectfully hope and pray that this Honorable Court will review the recommendation of the State Bar and permit me to continue in the profession to which I have devoted my life.

Oral argument was had before the state Supreme Court on August 29, 1983. On December 5, 1983, the said Court filed its opinion, ordering disbarment of petitioner. On December 20, 1983, petitioner filed a Petition for Rehearing or Reconsideration, in which were argued the following points:

I. Petitioner has been denied due process, under state and federal constitutions, in that the language of the Business and Pro-

fessions Code under which charges against petitioner were brought are vague, indefinite, and uncertain.

II. Petitioner has been denied due process and equal protection, under state and federal constitutions, by a discriminatory application of the law to petitioner.

III. Petitioner has been denied due process and equal protection, under state and federal constitutions, because of the race of petitioner.

Petitioner called the Court's attention to the "undisputed fact that, in thirty years of law practice, petitioner has had no trouble with the criminal cases in which he specializes," and respectfully suggested an alternative to suspension or disbarment: that justice would be done and the Constitution served by a lengthy probation during which petitioner would be ordered to desist from taking civil cases and to save harmless those who have been in any way injured by his

breach of the professional contract of attorney-client in the latter class of practice.

The state Supreme Court took petitioner's Petition under submission; and on January 25, 1984, denied and overruled petitioner's federal as well as state constitutional positions by denying the said rehearing or reconsideration.

H. ARGUMENT

I. PETITIONER HAS BEEN DENIED FEDERAL AND STATE RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS BY THE ORDER OF DISBARMENT.

(A). The Language of the Business and Professions Code Is Unconstitutionally Vague, Indefinite, and Uncertain.

Due process of law in legislation requires definiteness, or certainty; a vague or uncertain statute does not meet the requirements of due process. USA v Southern Railway Co. 364 F2d 86; Wright v Arkansas

Activities Ass'n 501 F2d 25; In re J.T. 115 CR 553, 40 CA3d 633.

If an act of the legislature is so incomplete, vague, indefinite, or uncertain that men of common intelligence must necessarily guess at its meaning and as to its application, it denies due process of law. Connally v General Construction Co. 269 US 385, 46 SCt 126, 70 LEd 322; Baggett v Bullitt 377 US 360, 84 SCt 1316, 12 LEd2d 377; Giaccio v State of Pennsylvania 382 US 399, 80 SCt 518, 15 LEd2d 447; Peo v Grubb 63 C2d 614, 47 CR 772, 408 P2d 100.

Typical of the language of the charges against petitioner is the following: The commission of any act involving moral turpitude, professional or non-professional, criminal or non-criminal, and, in the case of criminal acts, irrespective of any criminal conviction, is a cause for disbarment or suspension. B & P Code 6101.

That reasonable minds may differ as to

the meaning of the statute is shown by the fact that the California Bar and the California Supreme Court have, in the present case, read into the overly broad language of the statute acts which are merely negligent or which constitute an unintentional breach of contract.

Uncertainty is shown by the fact that the statements of the courts as to whether disciplinary action is punitive or non-punitive are inconsistent. According to some cases, disciplinary proceedings are criminal or quasi-criminal in nature. See Haymon, In re 121 C 385, 53 P 899; Morton, In re 179 C 510, 177 P 543; Luce, In re 83 C 303, 23 P 350; McCowan, In re 177 C 93, 170 P 1100; Golden v State Bar 213 C 237, 2 P2d 325; Harrscher v State Bar 4 C2d 399, 49 P2d 832.

In many cases, it is intimated that the purpose of discipline is both punitive and protective. See Hill v State Bar 2 C2d 622, 42 P2d 629; Maura v State Bar 18 C2d

31, 112 P2d 829.

Crimes must be defined in a statute with appropriate certainty and definiteness. Aptheker v Secretary of State 378 US 500, 84 SCt 1659, 12 LEd2d 952; Peo v Ortiz 200 CA2d 250, 19 CR 211.

The constitutional vice in a vague or indefinite statute is the injustice to accused in placing him on trial for an offense as to the nature of which he is given no fair notice. Grayned v City of Rockford 408 US 104, 92 SCt 2294, 33 LEd2d 222.

The essential purpose of the "void for vagueness" doctrine is to warn individuals of the criminal consequences of their conduct. Colton v Kentucky 407 US 104, 92 SCt 1953, 32 LEd2d 584.

Laws which are drawn so widely as to destroy the innocent in order to catch the guilty are a denial of due process. Melton v Railroad Commision of Texas 10 FS 984.

The principle of due process of law requiring reasonable certainty of description in fixing a standard for exacting obedience has application in civil as well as in criminal legislation. Cline v Frink Dairy Co. 274 US 445, 47 SCt 681, 71 LEd 1146; Ward v Auctioneers Ass'n of Southern Cal. 153 P2d 765, 67 CA2d 183.

In Czarra v Board of Medical Supervisors 25 App DC 443, a statute providing for the revocation of a physician's license for "un professional or dishonorable conduct" was held to be void on the ground of vagueness.

(B). Petitioner Has Been Denied Procedural Due Process.

A matter of interest on this point, not properly considered by the state Supreme Court though testified about at the hearing even in the absence of petitioner, is as follows: Claimant DeShazer (Mr. D.) had been willing to settle his wrongful-death suit for $5,000.00 because the defendant was indi-

gent and had no insurance; petitioner kept the action alive, hoping to get a larger settlement; the five-year statute ran during the said efforts on petitioner's part; then, miraculously, before the trial of the malpractice suit filed by Mr. D. against petitioner, the former defendant had begun to prosper so that now the value of the wrongful death claim was $75,000.00, which petitioner became liable for in a default court hearing.

The complainant Mr. D. now has a lien for that amount on petitioner's home, which petitioner had hoped to leave for his child and grandchildren; and in view of the above facts, one is reminded of the language of Mr. Justice Newman (dissenting) in Marcus v State Bar 27 C3d 199, 165 CR 121, 611 P2d 462: "The petitioner has been a member of the bar for more than 53 years. Already he has been punished severely. To disbar him now seems needlessly harsh, even draconian."

It is petitioner's point that due proc-

ess was denied by the Bar's accepting and the Court's adopting the claim of Mr. D. From the timing of his lawsuit and the filing of his claim before the Bar, it is obvious that his counsel used the disciplinary proceeding for a private purpose, to serve as a lever or wedge to enforce payment of the judgment in the malpractice suit. Petitioner submits that such use is contrary to the purpose of disciplinary proceedings and constitutionally suspect.

In a given case, the court may consider particular circumstances which make it unjust or unfair to require an attorney to answer charges raised after an unreasonable delay. Lowenthal, In re 78 C 427, 21 P 7.

This is especially the case where the conduct of the accused has been exemplary in recent times. USA v Parks 93 F 414.

(C). Petitioner Has Been Denied Equal Protection of the Laws by the Court's Failure to Observe and Follow the Rule of Pro-

portionality.

The Fourteenth Amendment to the Constitution of the United States provides: "Nor shall any State deprive any person of life, liberty, or property, without due process of law." By virtue of a further clause in the said Amendment, a state may not deny to any person within its jurisdiction the equal protection of the laws.

It is petitioner's position that the state Court has exacted greater penalty in this case than in any other similar state of facts which petitioner has discovered; that in cases of much more aggravated conduct on the part of accused counsel, leniency has been shown; and that in cases of equal or greater magnitude, disbarment has not been decreed.

In view of the criminal or quasi-criminal nature of disbarment proceedings, it is respectfully submitted that the recent "proportionality" doctrine of the United States

Supreme Court should be here applied:

Eighth Amendment forbids sentence, including prison term for felony, that is disproportionate to the crime; in making disproportionality analysis court should examine objective criteria such as gravity of the offense and harshness of penalty, sentences imposed for other crimes in same jurisdiction, and sentences imposed in other jurisdictions for the same crime. See Solem v Helm _____US_____, 103 SCt 3001, 77 LEd2d 637.

Relief from state disbarment proceedings can be had in a federal court.....on proof of federal constitutional violations. Getty v Reed 547 F2d 971.

The power to discipline attorneys is not an arbitrary one to be exercised at the pleasure of the court or because of passion, prejudice, or personal hostility; it is rather one to be used with moderation and caution, in the exercise of a sound judicial

discretion, and only in a clear case, for the most weighty reasons. In re Fisher 179 F2d 361; In re Spicer 126 F2d 288; In re Claiborne 119 F2d 647; In re Sacher 206 F2d 357.

The wrongdoing must have been intentional or wilful in order to constitute cause for the disciplining of an attorney, and there must have been an improper or fraudulent motive for the acts or conduct complained of. In re Ryder 263 FS 360; Wallis v State Bar 21 C2d 322, 131 P2d 531.

Broad power in this respect.....cannot be exercised so as to ignore or abrogate federally protected rights, or rights secured by the constitution. Johnson v Avery 393 US 483, 89 SCt 747, 21 LEd2d 718; Erdman v Stevens, CA NY, 458 F2d 1205; Staud v Stewart 366 FS 1398; Ex parte Auditor of Public Accounts (Ky) 609 SW2d 682; Singer Hutner Levine Seeman & Stuart v Louisiana State Bar Assn. 378 So2d 423, 6 ALR 4th

1244; State Bar v Kramer 249 NW2d 1, 399 Mich 116; Ballou v State Ethics Comm. 424 A2d 983, 56 PaCom 240.

The practice of law is not a matter of grace or favor, but is a right for one who is qualified by learning and moral character. Baird v State Bar of Arizona 401 US 1, 91 SCt 702, 27 LEd2d 639; Schware v Board of Bar Examiners of State of New Mexico 353 US 232, 77 SCt 752, 1 LEd2d 796, 64 ALR2d 288; Hallinan v Committee of Bar Examiners of State Bar 65 C2d 447, 55 CR 228, 421 P2d 76.

Claim for admission to the bar is one of "right" entitled to protection of procedural due process. Hallinan v State Bar, supra.

The language of the immediately preceding paragraph can be paraphrased to afford the same due process rights to retention of membership in the Bar, once attained.

The right to practice of the profession of medicine, once regularly obtained by com-

pliance with the law, becomes a valuable privilege or right in the nature of property, and is safeguarded by the principles that apply in the protection of property lawfully acquired. Czarra v Board of Medical Supervisors 25 App DC 443.

A statute providing for the revocation or suspension of a medical or legal professional license, although constitutional on its face, may be enforced so arbitrarily as to deprive the licensee of due process of law. Butcher v Maybury 8 F2d 155.

To illustrate petitioner's claim of disproportionate treatment, we now set forth the following cases, in which, while the acts complained of were well beyond those of the present case in blameworthiness, suspension only, or even reprimand, was imposed:

Plea of guilty to grand theft. Re Doe (1978) 20 C3d 350, 143 CR 253, 573 P2d 472 (3 years).

Misappropriation; commingling; failure

to promptly disburse funds; prior discipline for failure to pay litigation costs. Blair v State Bar (1980)27 C3d 407, 165 CR 834, 612 P2d 924.

Misappropriation of clients' funds, forgery, improper collection of unearned fees; unconscionable fees; failure to forward files; unnoticed withdrawal. Finch v State Bar (1980) 28 C3d 659, 170 CR 629, 621 P2d 253 (5 years).

Misconduct involving client trust funds; prior record involving misappropriation; $20,000.00 misappropriated in present case; false statements in prior proceedings. Doyle v State Bar (1982) 32 C3d 12, 184 CR 720, 648 P2d 942 (5 years).

Moral turpitude and dishonesty; misappropriating clients' funds; misleading a client in a business transaction. Giovanni v State Bar (1980) 28 C3d 465, 169 CR 581, 619 P2d 1005 (3 years).

Improper claim of lien, commingling and

temporary conversion. Cain v State Bar (1978) 21 C3d 523, 146 CR 737, 579 P2d 1053.

The court in Gould v State (1930) 99 Fla 662, 127 So 309, 69 ALR 699, held that an order of disbarment was erroneous and should be reversed where it appeared that the attorney was charged with failure to diligently prosecute claims, and thus causing the client to lose the benefits which should have been secured to him under the statutory lien laws, the court saying that "no corruption is charged, but laziness or inattention to business entrusted to his care, and prevarication to excuse it," and that evidence was wholly insufficient to establish any dishonorable or corrupt motive on the attorney's part, even if the charge was sufficient to put him to trial.

In Atty. Gen. v Lane (1932) 259 Mich 283, 243 NW 6, it was stated that inattention to duty, unaccompanied by moral delinquincy, by an attorney to the affairs of a client

called for censure but did not, standing alone, constitute grounds for disbarment.

In Glenn v State Bar of California (1939) 14 C2d 318, 94 P2d 43, it was held that an attorney should be suspended for two years, rather than disbarred, where he accepted fees from several different clients and thereafter rendered little, if any, service, misinformed his clients as to the progress of their business on several occasions, converted clients' funds, failed to inform a client of an advantageous offer of settlement in order that he might be retained to handle further litigation in the matter, and caused one client to file a blank form of verification to a complaint which had not been then drawn. The court, in ordering suspension rather than disbarment, stated that the record failed to reveal that the attorney was wilfully dishonest or deliberately neglectful of his clients' business, but that his dereliction

of duty in the main grew out of his financial embarrassment, and that while this fact would not, of course, justify his conduct or absolve him from wrongdoing, it would in measure lessen to at least a slight degree its blameworthiness.

Where an attorney accepted a fee from one client for the purpose of establishing a birth record and neglected to perform the services, and failed to complete the probate of an estate for another client, it was held in Farrar v State Bar (1934) 1 C2d 359, 34 P2d 1024, that the attorney should be suspended for one year, the court pointing out that his misconduct consisted of dilatoriness and negligence and did not in any way involve moral turpitude, that the attorney appeared willing to do whatever in his power to compensate for his neglect, that he acknowledged his responsibility and the justice of the disciplinary action, and that he asked only that the pun-

ishment be not so severe as to preclude his place in the legal profession.

Where an attorney was charged with failure to file an inventory and appraisement or proof of publication of notice to creditors, and for over two years after his appointment as executor with failing to file an accounting, with paying himself an attorney's fee without court approval, and with distributing part of the estate without court order, it was held in Re Stone (1934) 77 Ariz 115, 267 P2d 892, that the record disclosed extreme carelessness in the handling of the estate, and while in view of an absence of any evil or fraudulent intent, the willingness of the attorney to see that no loss resulted to any innocent persons, and his previous good reputation as an individual and as an attorney, disbarment or suspension of the attorney was too severe a penalty to impose under all the circumstances, he should be severe-

ly reprimanded for his carelessness and neglect in handling the affairs of the estate and warned that any repetition of conduct unbecoming a member of his profession might well result in the imposition of a more severe penalty.

Where mere negligence was involved and there was no suggestion of moral turpitude on the part of an attorney when he failed to file his brief and caused a client's appeal from a tax foreclosure proceeding to be dismissed, the court in Holland v Flournoy (1940) 142 Fla 459, 195 So 138, reduced the attorney's suspension from two years to five months, saying that the two-year suspension was too severe in the light of the attorney's reputation of being an able and outstanding member of the bar and the fact that he was in his middle sixties, and that a suspension for two years would be tantamount to disbarment.

Attorney was suspended for five years

on condition of probation, including actual suspension of six months, where he misappropriated funds, wilfully failed to render services, refused to communicate with clients regarding status of their actions and made false and knowing deceptions; however, his good reputation as attorney before and after period in question as well as his candor, cooperation and remorse throughout disciplinary proceedings, were mitigating circumstances. Demain v State Bar 3 C3d 381, 90 CR 420, 475 P2d 652.

Attorney's misconduct in, inter alia, failing to perform legal services and commingling and misappropriating client funds amounted to pattern of habitual offenses which could only be regarded as deliberate and wilful; relatively lenient punishment of actual four-month suspension would be imposed where misconduct at issue occurred prior to 1976 public reproval, where there was no evidence that pattern of neglect con-

tinued beyond 1976 proceeding and where, inter alia, there was showing that attorney had taken steps to establish more orderly office procedures. Inniss v State Bar 143 CR 408, 20 C3d 652, 573 P2d 852.

Where attorney had (1) commingled general account with client funds, (2) abandoned client by willfully failing to provide legal services he was retained to perform, (3) filed false accountings with probate court in two separate estate probate matters, with intent to deceive court, and (4) willfully misappropriated client funds in three separate instances, suspension was appropriate penalty taking into consideration attorney's unblemished record over period of 37 years of law practice, his age (65 years), his medical problems, his medical problems, his emotional distress over suicide of associate, and his restitution of misappropriated funds; suspension for five years imposed with execution of order

stayed and attorney placed on probation for five years on condition that he be suspended for first three years and readmission thereafter be conditioned on passing Professional Responsibility Examination. Jackson v State Bar (1979) 23 C3d 509, 153 CR 24, 591 P2d 47.

Indefinite suspension rather than disbarment, was imposed on assistant city solicitor with history of misconduct, who failed to timely record deed for private clients, where there was strong evidence of his competence as a city employee and where he agreed to limit practice to real-estate matters involving city as part of sanction. Attorney Grievance Com. v Pollack (1981) 289 Md 603, 425 A2d 1352.

(D). Petitioner Was Denied Equal Protection Because of His Race.

Discrimination by a state against any person within its jurisdiction because of race or color constitutes a denial of equal protection of the laws. Colorado Anti-Dis-

crimination Commission v Continental Air Lines, Inc. 372 US 714, 83 SCt 1022, 10 LEd2d 84; Hunter v Erickson 393 US 385, 89 SCt 557, 21 LEd2d 616.

This rule protects against state action, which includes action by the judiciary, as well as by the legislature. Johnson v State of Virginia 373 US 61, 83 SCt 1053, 10 LEd2d 195.

Federal court has jurisdiction to review denial of license to practice law based on constitutionally impermissible reason and claim of racial discrimination. Newsome v Dominque (1978) 455 FS 1373.

Eversince I moved from Ohio to California, over thirty years ago, I have heard it said that unfair standards for admission to the Bar have been visited upon members of minority races, in particular the black one. I have always questioned, even challenged, this position, pointing out that, as far as is known, the Bar examiners have no way of

knowing the race of those whose tests they are grading.

However, different considerations may apply in disciplinary proceedings, where the race of the accused is obvious. Thus, the prosecuting staff of the State Bar may have members who exercise less than objective standards in their actions and recommendations; and the Supreme Court of the State may unconsciously compound racial selectivity perpetrated by the Bar lawyers.

It is conceivable that some of the staff lawyers may act out of personal or racial bias, and it is important for the state Supreme Court to carefully supervise disciplinary actions of the Bar in order to prevent, as much as possible, discriminatory conduct by way of investigation and recommendation of the staff attorneys and the hearing boards.

Thus, in the instant case, the representative of the Bar at the hearing of oral

argument on August 29, 1983, had no answer to a suggestion of one of the justices of the state Supreme Court that, while this petitioner may have acted "sloppily" in dealing with the disgruntled clients, there did not seem to be intentional wrong on his part--with the further implication that it was unusual for the Bar to recommend such severe sanction in a factual situation like that of this petitioner.

That the state Supreme Court may itself be guilty of racial bias, conscious or otherwise, may be illustrated by my own history before it. Thus, for a five-year period (as stated in the facts hereinabove), beginning in February, 1955, I fought almost singlehandedly against general criminal registration in California. Mine was a labor of love, for which I was paid no fee, though appearing twice before the United States Supreme Court in argument leading to the decision in Lambert v California 355 US 225,

77 SCt 240, 2 LEd2d 228, that ignorance of the law can be an excuse (as in failure to register as an ex-convict, not having been informed of the duty so to do). What I call the Supreme Court phase of my efforts took two years, fortunately, so that, by adding the one year I had practiced in Ohio, I just barely qualified under the then recently reduced (from five years) three-year rule, to personally appear before the Court for oral argument.

The second phase, proceeding in the state courts after the Supreme Court decision, took three years, ending in April, 1960. During the last six months of these proceedings the American Civil Liberties Union jumped on the bandwagon; and the companion cases of Lambert v Municipal Court 53 C2d 690, 3 CR 168, and Abbott v City of Los Angeles, 53 C2d 674, 3 CR 158, were jointly argued by me and Al Wirin of the ACLU. For reasons best known to it, the California

Supreme Court wrote the principal opinion in Abbott although Wirin specifically refused to urge, in his brief and oral argument, the point upon which the decision was based: pre-emption of criminal registration by the state statute. Wirin had asked me to waive my argument on statutory conflict and join him in his due process and equal protection approach, but my knowledge of how appellate courts often rely upon less sweeping a view of the law caused me to stick with all my points, including the ones on due process and equal protection.

Ironically, the state Supreme Court gave the Abbott counsel credit for the Lambert argument that I, and I alone, had been making in briefs and motion and oral argument since my first demurrer in a criminal case in February, 1955.

The ACLU lawyers were white. I am black.

I believe that a close scrutiny of the

choice of suspension or disbarment by the Court, and the recommendations thereof by the Bar, will show racial selectivity--and that such appears in the cases hereinabove presented and that of petitioner.

I. SUMMARY AND CONCLUSION

Disbarment should be decreed only when the court is convinced of its necessity for the protection of the profession, the courts, and the public, and a removal from the bar should not be decreed where any punishment less severe, such as reprimand, temporary suspension, or fine, would accomplish the end desired. In re Ruffalo 390 US 544, 88 SCt 1222, 20 LEd2d 117; USA v Rivera, CA 9, 475 F2d 1372; USA v Rafter, CA Cal, 469 F2d 91; USA v Smith, CA Cal, 436 F2d 1130; Barbee v State Bar 213 C 296, 2 P2d 353.

To warrant disbarment, an attorney's conduct must be so gross as to show want of integrity, moral turpitude, depravity of character, or dishonesty. State v Jennings

161 SC 263, 159 SE 627.

A lawyer should not be permanently deprived of his profession by disbarment when he has reached an age where it would be difficult for him to enter any other walk of life, if there is reasonable hope of reformation. In re Williams 128 SW2d 1098, 233 MoApp 1174.

Disbarment of an attorney is the destruction of his professional life, his character and his livelihood and therefore should be imposed in moderation. In re Power 96 NE2d 460, 407 Ill 525.

Disbarment, being the most severe punishment which may be meted out to an attorney, should be imposed only when the evidence shows that the possibility of restoration is unlikely or remote, or where the attorney demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. The Florida Bar v Davis 361 So2d 159; Matter of Alpera 574

SW2d (Mo) 427.

Where mitigating circumstances are shown, the court will often suspend, rather than disbar, the attorney, or will reduce the term of suspension. In re Paris 4 FS 878; Smukler v State Bar 2 C2d 80, 38 P2d 977; Recht v State Bar 218 C 352, 23 P2d 273; Hyland v State Bar 59 C2d 765, 382 P2d 369; Durbin v State Bar 23 C3d 461, 152 CR 749, 590 P2d 876.

The court may, instead of striking an attorney's name from the rolls, merely suspend him from practice. Oliver v State Bar 525 P2d 79, 12 C3d 318, 115 CR 639.

Where the misconduct of the attorney is not sufficiently flagrant to justify disbarment or suspension, or mitigating circumstances are shown, a reprimand or censure may be administered. In re Baker 297 US 691, 80 LEd 1414; In re Carroll 416 F2d 985; Davidson v State Bar 17 C3d 570, 131 CR 379, 551 P2d 1211.

Where there are mitigating circumstances, the court may, instead of suspension or disbarment, place the attorney on probation, on certain conditions. In re Reynolds 18 C3d 929, 136 CR 131, 559 P2d 55; In re Cohen 11 C3d 935, 114 CR 611, 523 P2d 651.

At the disciplinary hearing before the State Bar committee on 2-17-81, the chief prosecuting attorney had to make a grudging concession: "Mr. McMorris has appeared at some of the prior hearings and the defenses that he raised there were that he had a great deal of secretarial problems, a great deal of turnover, that he had a busy criminal practice and that the civil matters tended to slip through the cracks, so to speak.....And all of the discipline that's been imposed on him has been imposed because of actions in civil cases."

In view of the undisputed fact that, in thirty years of law practice, this petitioner has had no trouble with the crimi-

nal cases in which he specializes and which form the bulk of his practice, it is respectfully suggested that justice would be done and the Constitution served by a lengthy probation during which petitioner would be ordered to desist from the civil practice and to save harmless those who have been in any way injured by his breach of the professional contract of attorney-client in the latter.

Respectfully submitted,

Samuel C. Mc Morris

SAMUEL C. MC MORRIS
Petitioner

APPENDIX A

SUPREME COURT OF THE STATE OF CALIFORNIA

SAMUEL CARTER MC MORRIS, Petitioner -vs- THE STATE BAR OF CALIFORNIA, Respondent	S.F. 24545

BY THE COURT

This is a proceeding to review the recommendation of the State Bar of California that petitioner, Samuel Carter McMorris, be disbarred from the practice of law. This recommendation is based on petitioner's willful failure to communicate with several of his clients and to perform the services for which he was retained during the period from November 1969 to September 1978. For the reasons discussed below, we adopt the State Bar's recommendation and conclude that petitioner should be disbarred.

Petitioner was admitted to the practice of law in California on January 14, 1954. He has a record of prior discipline. On December 8, 1977, this court suspended petitioner from the practice of law for a period of one year for acts of misconduct which occurred between 1975 and 1977. Execution of this order was stayed and petitioner was placed on probation with the conditions that he make restitution of $200.00 received in advanced fees and $40.00 which was misappropriated, and that he take and pass the Professional Responsibility Examination within one year. (Bar Misc. No. 4028).

Subsequently, on September 20, 1978 (effective Oct. 21, 1978) this court suspended petitioner for 90 days for failure to perform services for which he had been retained. (Bar Misc. No. 4077). On January 15, 1979, we again suspended petitioner because he had failed to take and pass the Professional Responsibility Examination within one year.

(Bar Misc. No. 4028). Petitioner remained suspended until May 17, 1979.

In February 1981, as a result of further acts of misconduct occurring during the period from June 1975 to November 1978, including three counts of failing to perform services for clients, we suspended petitioner from the practice of law for 180 days, ordered that he again submit to the State Bar proof of passage of the Professional Responsibility Examination, and ordered that he comply with rule 955 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule. (McMorris v State Bar (1981) 29 Cal. 3d 96).

In the present matter, formal proceedings were instituted against petitioner on August 12, 1980, October 22, 1980, January 19, 1981, and March 24, 1981, by notices to show cause charging petitioner with a total of eight counts of misconduct. After sep-

arate hearings, three counts were dismissed. In the remaining five counts, the State Bar Hearing Panels found multiple violations of the following statutory and rule provisions: (1) Business and Professions Code section 6067[1] (the attorney's oath to faithfully discharge his or her duties to the best of one's knowledge and ability); (2) section 6068 (setting forth several duties of an attorney); (3) section 6103 (violation of the attorney's oath or duties, or willful violation of a court order connected with the attorney's profession); (4) section 6106 (commission of an act involving moral turpitude, dishonesty or corruption); (5) rule 6-101, subdivision (2) of the Rules of Professional Conduct[2]

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1 All further statutory references are to the Business and Professions Code unless otherwise indicated.

2 All further references to rules are to the Rules of Professional Conduct of the State Bar of California unless otherwise indicated.

(willful or habitual failure to use reasonable diligence and best judgment in an effort to accomplish the purpose for which the attorney has been employed); and (6) rule 2-111 (guidelines to withdrawal from employment and representation of a client). The hearing panels uniformly recommended disbarment.

These matters were consolidated by the State Bar Review Department for purposes of oral argument and for the rendering of joint findings of fact and a single recommendation. The review department unanimously adopted the findings of fact of the hearing panels and recommended that petitioner be disbarred.

These several violations arose in seven separate matters involving five different clients. With two minor exceptions, petitioner does not contest these findings, which are set forth below.

1. The F. Matter.

In March 1978, Mr. F. retained petitioner to represent him in connection with a contract and collection dispute. After filing the complaint, petitioner failed to perform the services for which he was retained. He did not advise Mr. F. that a cross-complaint had been filed against him or that trial had been set. Petitioner failed to appear at trial and a default judgment was entered against Mr. F. in the sum of $5,000. Petitioner failed to respond to Mr. F.'s inquiries regarding the case and did not advise him of the default judgment. Mr. F. was ultimately required to obtain additional counsel to have the default judgment set aside.

The State Bar concluded that petitioner violated his oath and duties as an attorney as defined by section 6067.

2. The P. Matter.

On September 14, 1978, Ms. P. paid $500 to retain petitioner to represent her in a

pending probate proceeding pertaining to her deceased father's estate. Thereafter, petitioner failed to perform any of the services for which he was retained and did not respond to Ms. P's inquiries regarding her case.

The State Bar concluded that petitioner violated his oath and duties as an attorney as defined by section 6067 and rule 6-101, subdivision (2), and that he retained the sum of $500 for his own use while performing no services for his client.

3. The D. Matter.

On November 8, 1969, Mr. and Mrs. D. entered into a contingency fee agreement with petitioner to bring an action on their behalf to recover damages for the wrongful death of their son. Thereafter, petitioner failed to perform any services for which he was employed. The case was dismissed on January 31, 1975, pursuant to the provisions of Code of Civil Procedure section 583 for

failure to bring the action to trial within five years. Petitioner failed to respond to inquiries by Mr. D. regarding his case. He did not return Mr. D.'s telephone calls nor did he respond to a registered letter. Mr. D. subsequently filed a legal malpractice action against petitioner and obtained a default judgment in July 1978 for the sum of $75,000. No part of this judgment had been paid by petitioner at the time of the State Bar hearings.

The State Bar concluded that petitioner willfully and intentionally violated his oath and duties as an attorney and committed acts of moral turpitude in violation of sections 6067, 6068, 6103 and 6106 and rule 6-101, subdivision (2).

4. The T. Matters.

During February, September, and October 1978, Mr. T. entered into four contingency fee agreements with petitioner for representation in four separate legal matters. One

of these matters was successfully resolved by petitioner. The remaining matters involved possible litigation against an automobile transmission repair service for damages to Mr. T.'s car, a possible action against a restaurant to recover damages for personal injury, and the filing of a probate action. Thereafter, petitioner failed to perform any services for which he had been employed and failed to respond adequately to Mr. T.'s inquiries regarding any of these cases. Petitioner represented to Mr. T. that the probate case was under control. However, Mr. T. never recovered any money from the estate and he testified that he believed the estate had now escheated to the state.

The State Bar found that petitioner wilfully violated sections 6067, 6068 and 6103 and rule 6-101, subdivision (2).

5. The G. Matter.

On March 2, 1977, petitioner agreed

to represent Ms. G. in an action to recover damages for personal injuries resulting from an automobile accident. Apparently, no fee arrangement was discussed. Petitioner represented Ms. G. in trial but an adverse jury verdict was rendered. Thereafter, petitioner agreed to represent Ms. G. on appeal for a $500 fee to cover the cost of the transcript. Petitioner received $200 in installments.

Petitioner filed a notice of appeal on April 17, 1978. As noted above, on October 21, 1978, petitioner was suspended from the practice of law by order of this court. (Bar Misc. No. 4077). On October 30, 1978, petitioner was notified that the appeal was subject to dismissal unless a filing fee was paid. Petitioner did not notify Ms. G. of this notice, nor of his suspension, and he did not pay the filing fee. The appeal was dismissed on December 6, 1978. Petitioner did not so notify Ms. G. and took no action

to have the dismissal set aside. Moreover, petitioner did not respond to Ms. G.'s inquiries regarding her case.

The State Bar concluded that petitioner willfully violated sections 6067 and 6103 and rules 6-101, subdivision (2) and 2-111 and that he retained the sum of $200 for his own use while performing no services for his client.

DISCUSSION

Petitioner did not respond by pleadings or appear at any of the proceedings before the hearing panels on these matters because, as he concedes, he "had no defense to the basic fact of not having prosecuted the claims of the complainant clients." Petitioner did, however, petition the review department for relief from default, hearings de novo and review of the decisions of the hearing panels in the D., T. and G. matters. These petitions were denied. He also challenged without success the recommended dis-

cipline of disbarment. Additionally, although there is no transcript of the proceedings, petitioner was present and addressed the review department on October 14 and 15, 1982.

The only challenges to the evidence which petitioner renews here are that he informed Mr. T. of his suspension and that it was his intention to attempt to handle the G. appeal as law clerk for another attorney of his selection. Also, petitioner states simply that he "expected the finding to be negligence, not intentional tort."

Petitioner bears the burden of showing that the findings of the State Bar are not supported by the evidence. (Gallagher v State Bar (1981) 28 Cal.3d 832, 837.) "In meeting this burden, the petitioner must demonstrate that the charges of unprofessional conduct are not sustained by convincing proof and to a reasonable certainty." (Himmel v. State Bar (1971) 4 Cal.3d 786, 794).

Petitioner has not met this burden. We have stated that attorneys who have not appeared before the local hearing panels may not subsequently demand that this court consider evidence which should have been previously presented. (Lavin v State Bar (1970) 14 Cal.3d 581, 585). Moreover, upon our independent review of the record we conclude that the findings of the review department, including those pertaining to the T. and G. matters, are supported by the evidence. Petitioner's assertion that he informed Mr. T. of his suspension is irrelevant. The State Bar did not find that petitioner failed to inform Mr. T. of his suspension or that petitioner's handling of the T. matters constituted the practice of law while suspended. Furthermore, petitioner nowhere asserts that he ever selected another attorney to pursue the G. matter.

Petitioner's hope that the State Bar would find his misconduct negligent, not in-

tentional, is also without support. We have previously stated that "although a few of (petitioner's) offenses, standing alone, might be described as merely negligent, or grossly negligent, his persistence in refusing to perform services for which he was engaged, and for which he accepted fees, can only be regarded as deliberate and willful." (Grove v. State Bar (1967) 66 Cal.2d 680, 683).

Concluding that the State Bar's findings regarding petitioner's conduct are supported by the evidence, we next consider whether petitioner's misconduct warrants the discipline recommended. Petitioner contends that disbarment is excessive. He seeks to mitigate the recommended discipline by reference to his background and character, the many cases in which he has previously rendered "highly satisfactory services, often as a matter of charity," his "significant contributions" to the "evolution of the law

in criminal justice,"the fact that he "attracts more business than he can handle," his inability to secure adequate secretarial services, and his declining health.

Although we give great weight to the State Bar's recommendation, this court exercises its independent judgment in determining the appropriate degree of discipline to be imposed. (Warner v. State Bar (1983) 34 Cal.3d 36, 43.) "Determination of discipline turns upon several considerations, including the protection of the public, the promotion of confidence in the legal profession, and the maintenance of professional standards." (Rimel v State Bar (1983) 34 Cal.3d 128,1131.) Petitioner bears the burden of demonstrating that, with due consideration to these objectives, the recommendation of the State Bar is erroneous. (Ibid.) For the following reasons, we conclude that petitioner has not met this burden.

As we stated in 1961, "petitioner's

past participation in important criminal appeals, and his literary contributions, as outlined in his petition for review, while commendable, cannot excuse his repeated failures to perform services for his clients. Nor do petitioner's busy practice and secretarial problems constitute circumstances which substantially mitigate such misconduct. (Citations.)" (McMorris v State Bar, supra, 29 Cal.3d 96, 99; see also Ridley v State Bar (1972) 6 Cal.3d 551, 561.)

Petitioner contends that during the last five or six years he has suffered repeated "low-back syndrome," viral infections and treatment for suspected tuberculosis. However, petitioner's abandonment of Mr. and Mrs. D.'s case as early as 1969 casts some doubt on his assertion that his health has been a significant causative factor in his misconduct. (Cf. Ambrose v. State Bar (1982) 31 Cal.3d 184, 195.)

In determining its recommended degree

of discipline, the State Bar properly considered petitioner's prior disciplinary record. (McMorris v. State Bar, supra, 29 Cal.3d 96, 100; Marcus v State Bar (1980) 27 Cal.3d 199, 202.) We may also consider the harm suffered by others as a result of the attorney's misconduct. (Spindell v State Bar (1975) 13 Cal.3d 253, 261.)

Significantly, in examining the combined record of this disciplinary proceeding and petitioner's prior discipline, we are confronted not by isolated or uncharacteristic acts but by "a continuing course of serious professional misconduct extending over a period of several years." (Tomlinson v. State Bar (1975) 13 Cal.3d 567, 576.) We are therefore concerned with what appears to have become an habitual course of misconduct. We believe that the risk of petitioner repeating this misconduct would be considerable if he were permitted to continue in practice. (Himal v. State Bar,

supra, 34 Cal.3d 128, 131-132.) As petitioner has previously demonstrated, the public and the legal profession would not be sufficiently protected if we merely, once again, suspended petitioner from the practice of law. (Ambrose v. State Bar, supra, 31 Cal.2d 184, 196).

"As we have repeatedly stated, willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. (Citations)" (Lester v State Bar (1976) 17 Cal.3d 547, 551.) Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude justifying disbarment. (Grove v. State Bar, supra, 66 Cal.2d 680, 683-385; accord Marcus v. State Bar, supra, 27 Cal.3d 199, 202; Schullman v. State Bar (1976) 16

Cal.3d 631, 635-636; Ridley v. State Bar, supra, 6 Cal.3d 551, 560-561; Alkow v. State Bar (1971) 3 Cal.3d 924, 935-936; Simmons v State Bar (1970) 2 Cal.3d 719, 729-732.)

Accordingly, we order that petitioner be disbarred from the practice of law in this state. We further order that petitioner comply with rule 955 of the California Rules of Court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order. This order will be effective 30 days after the filing of this opinion.

APPENDIX B

ORDER DENYING REHEARING

NO. S.F. 24545

SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SAMUEL CARTER McMORRIS

-vs-

STATE BAR OF CALIFORNIA

Petition for rehearing DENIED.

s/ BIRD
Chief Justice